IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.264 OF 2002

Mrs. Asha Rawat,
an adult, of Mumbai,
residing at Flat No.A/01,
Himgiri Cooperative
Housing Society Ltd.,
Malwani, Malad (West),
Mumbai 400 095 by and
through her husband and
C.A. Mr. Hira Singh
Rawat .... Petitioner

- Versus -

1. Himgiri Cooperative Housing
   Society Ltd., a Society
   duly registered under the
   Maharashtra Cooperative
   Societies Act, 1960,
   under Regd.No.BOM/WP/
   HSWG/(TC) 1065 and having
   its office at Survey
   No.118 (Part) C.T.S.
   No.3327, Malavani Village,
   Malvani, Malad (W),
   Mumbai 400 095.
2. Deputy Registrar,

Cooperative Societies,
P. Ward, Malhotra House,
6th Floor, Opp: G.P.O.,
Fort, Mumbai 400 001.

3. Divisional Joint Registrar,
Cooperative Societies, M.D.
Mumbai, Malhotra House,
6th Floor, Opp: G.P.O.,
Fort, Mumbai 400 001.

4. The Special Recovery Officer
Gr.I Mumbai, having his
office at Mumbai District
Cooperative Housing
Federation Ltd., 2nd Floor,
Bell Building, Sir P.M.
Road, Mumbai-400 001. .... Respondents

Sarvasri Anil Singh i/b D.R. Shah for
the Petitioner.
Shri S.P. Srivastava for the Respondent
No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 03, 2004

ORAL JUDGMENT:

1. Heard the learned Advocate for the petitioner and the respondent No.1. Perused the records.

2. The petitioner challenges the orders passed under Section 101 of the Maharashtra Co-operative Societies Act, 1960, hereinafter called as "the said Act" on the ground that the same has been passed without affording fair opportunity to the petitioner of being heard in the matter and without considering the case put forth by the petitioner in reply to the show cause notice and secondly that the order under Section 101 is totally a non-speaking order.

3. The facts relevant for the decision are that the petitioner is a member of the respondent No.1-Society. Sometimes in the year 1999, proceedings were initiated by the petitioner against the management of the Society on the allegation of certain irregularities having been committed in the course of management of the Society. Subsequently a show cause notice came to be issued to the petitioner claiming arrears from the petitioner amounting to Rs.1,04,596/-. Pursuant to the said notice the petitioner filed her reply contending that the total amount of arrears which she owed to the respondent-Society was a sum of Rs.5,089/- towards the construction cost and not an amount of Rs.45,000/- as sought to be claimed by the respondent-Society. The

other dues also were sought to be disputed by the petitioner. By order dated 25-10-1999 the respondent No.2-Deputy Registrar, however, confirmed the claim of the respondent-Society to the tune of Rs.1,04,596/- and accordingly issued the recovery certificate under Section 101 of the said Act. The same was sought to be challenged by way of revision application by the petitioner which came to be dismissed on 9-3-2001. Hence, the present petition.

4. There is considerable substance in the grievance of the petitioner as regards the absence of application of mind by the authorities to the contentions which were raised on behalf of the petitioner. Plain reading of the order dated 25-10-1999, passed by the respondent No.2, discloses that merely because the authority is of the opinion that the petitioner owes the amount as claimed by the respondent-Society, that the authority proceeded to issue the recovery certificate. Though the order nowhere discloses any consideration of the contentions which were raised by the petitioner and the analysis of the materials, if any, on record, by the authorities before arriving at the finding about the liability of the petitioner to pay the sum of Rs.1,04,071/-. Indeed as rightly submitted by the learned Advocate for the petitioner, the order is apparently a non-speaking order. On that count itself,

the said order could not have been sustained and the revisional authority ought to have, while setting aside the said order, remanded the matter to the said authority to reconsider the case in accordance with the provisions of law and to pass a speaking order after taking into consideration the rival contentions as well as the materials placed on record by the parties. The learned Advocate appearing for the respondent No.1 also has fairly submitted that the authority was required to consider all the materials before arriving at the appropriate finding.

5. In the result, therefore, the petition needs to be allowed. The impugned orders are therefore hereby set aside and the matter is remanded to the Deputy Registrar to reconsider the case in accordance with the provisions of law and to pass an appropriate order after taking into consideration all the contentions sought to be raised by both the parties and after considering all the materials which both the parties may place before the authority. Needless to say that the authority will have to dispose of the matter as expeditiously as possible and in any case on or before 31-1-2005. The rule is made absolute in above terms with no order as to costs.